

**Local 127, International Alliance of Theatrical Stage Employees and Moving Picture Operators of the U.S. & Canada, AFL-CIO-CLC and F.P.S. & Associates, Inc., d/b/a F.P.S., Inc. and Time Life Productions, Inc. and International Alliance of Theatrical Stage Employees and Moving Picture Operators of the U.S. & Canada, AFL-CIO-CLC**

**International Alliance of Theatrical Stage Employees and Moving Picture Operators of the U.S. & Canada, AFL-CIO-CLC and F.P.S. & Associates, Inc., d/b/a F.P.S., Inc. and Time Life Productions, Inc. and Local 127, International Alliance of Theatrical Stage Employees and Moving Picture Operators of the U.S. & Canada, AFL-CIO-CLC. Cases 16-CD-131 and 16-CD-132**

July 30, 1981

### DECISION AND ORDER QUASHING NOTICE OF HEARING

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed in Case 16-CD-131 by F.P.S. & Associates, d/b/a F.P.S., Inc. (F.P.S.), alleging that Local 127, International Alliance of Theatrical Stage Employees and Moving Picture Operators of the U.S. & Canada, AFL-CIO-CLC (Local 127), violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring F.P.S. to assign certain work to employees represented by Local 127 rather than to employees represented by Locals 80, 44, 695, 705, 528, 767, and other unspecified locals of International Alliance of Theatrical Stage Employees and Moving Picture Operators of the U.S. & Canada, AFL-CIO-CLC (IATSE), and following a charge filed in Case 16-CD-132 by F.P.S., alleging that IATSE violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring Time Life Productions, Inc. (Time Life), to assign certain work to employees represented by IATSE locals other than Local 127 rather than to employees represented by Local 127.

The cases were consolidated for hearing and a hearing was held before Hearing Officer Ruth Small on July 15 and August 11, 12, and 13, 1980, at Fort Worth, Texas. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on issues. Thereafter, F.P.S., Local 127, and IATSE filed briefs.

The Board has reviewed the rulings made by the Hearing Officer at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

#### I. THE BUSINESS OF THE EMPLOYERS

The parties stipulated, and we find, that F.P.S. is a Texas corporation having its principal place of business in Dallas, Texas, where it provides preproduction and production services to producers engaged in motion picture and television work. During the 12 months preceding the hearing, a representative period, F.P.S. performed services valued in excess of \$50,000 for customers located outside the State of Texas and/or purchased or received goods valued in excess of \$50,000 from sources located outside the State of Texas.

The parties stipulated, and we find, that Time Life has an office in Los Angeles, California, where it is engaged in the production of motion pictures and television programs. During the 12 months preceding the hearing, a representative period, it performed services valued in excess of \$50,000 for customers located outside the State of California and/or purchased or received goods valued in excess \$50,000 from sources located outside the State of California. Accordingly, we find that F.P.S. and Time Life are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

#### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 127 and IATSE are labor organizations within the meaning of Section 2(5) of the Act.

#### III. THE DISPUTE

##### A. Background and Facts of the Dispute

In early 1980, Time Life hired Robert Papazian to produce a movie for television entitled "Crisis at Little Rock" ("Crisis"). After considering various locations, as well as the possibility of using a production crew composed entirely of local employees, Papazian decided to schedule 18 days of filming in Dallas, Texas, and 10 days in Little Rock, Arkansas, using a mixed crew of Los Angeles-based employees represented by IATSE and local employees. He also scheduled preproduction work, consisting, *inter alia*, of the preparation of costumes and sets for the actual filming, in Los Angeles and Dallas.

Time Life had not previously filmed in Dallas. Accordingly, a location scout contacted Joe Pope, F.P.S.'s executive vice president, and asked if F.P.S. would be interested in providing electrical and grip equipment for the shooting and in provid-

ing the local technical and production employees. Subsequently, Pope met with Time Life's unit production manager, Billy Ray Smith, and reached an agreement to provide equipment and labor for the production. They agreed that F.P.S. would be paid a flat rate for equipment rental and that it would be paid for providing labor and handling the payroll for these employees on a cost-plus basis, i.e., the cost of each employee's salary and benefits plus a specified percentage. They also executed a memorandum summarizing the procedure by which F.P.S. would provide its payroll services and acknowledging that F.P.S. would be given screen credit.

Time Life and F.P.S. apparently did not enter into any written agreement delineating precisely the job classifications and filming locations for which F.P.S. would provide employees and for how long these employees would work. Papazian testified that he at all times intended to replace the Dallas employees with Little Rock employees following the Dallas phase of filming and that he so told Smith. He also testified that when he called Josef Bernay, an international representative of IATSE, to arrange clearances for him to go into Dallas and Little Rock with a mixed crew of Los Angeles and local employees, he told Bernay he wanted to hire 10 employees in Dallas and replace them with 10 new employees when the production moved to Little Rock. Bernay corroborated Papazian's testimony. Bernay further testified that he then called Bill Bradford, business representative of Local 127 in Dallas, and told him Time Life intended to hire 10 people in Dallas, then "drop" them and hire 10 people in Little Rock, that he called Papazian back to tell him that the hiring of 10 people in each area had been cleared, and that he subsequently confirmed the arrangement with Smith. However, Smith testified that he intended to hire 10-12 employees in Dallas to work alongside various Los Angeles employees for the Dallas segment of production, then take these employees along with the Los Angeles employees to Little Rock, where an *additional* 10 employees would be hired. Furthermore, Pope testified that Smith told him this was Time Life's intent. Finally, Bradford testified that, although it was unclear initially whether the Dallas employees were hired for the run of the production or only for the Dallas segment, he subsequently was assured by both Papazian and Smith during production that the Dallas employees would be taken to Little Rock. Thus it appears that the various individuals involved had different understandings as to the locations for which the Dallas employees were to be hired.

F.P.S. has collective-bargaining agreements with both Local 127 and IATSE. Accordingly, following the above conversations Pope interviewed various members of Local 127 for work on "Crisis" and negotiated "deals" with those he selected. He then executed "start cards" and "deal memos,"<sup>1</sup> copies of which were forwarded to Smith for approval. Neither the start cards nor the deal memos indicated whether those hired would work in Little Rock in addition to Dallas, or how long they could expect to work.

Preproduction work in Dallas began sometime in early May 1980. Actual production began May 27 with a mixed crew of Los Angeles and Dallas employees working as an integrated unit under the same supervision. Dallas production work continued 18 days. Although F.P.S. exercised no day-to-day control over the Dallas employees, it did process their payroll.

According to Smith, on June 5, he received a call from Bernay in reference to a possible contract violation in the use of Dallas employees as grips. During this conversation Bernay asked him what he was going to do with the Dallas employees in regard to Little Rock, and Smith told him they were to be taken to Little Rock. According to Smith, Bernay then told him that if that occurred there would be grievances and he would pull the Los Angeles crew back to Los Angeles. Smith then contacted Papazian, who called Bernay and settled the problem regarding grips. Smith did not testify whether the issue of taking Dallas employees to Little Rock arose in the latter conversation.

According to Bernay, however, during his conversation with Smith the question of taking Dallas employees to Little Rock was not mentioned. During his conversation with Papazian, however, Papazian asked if he could take the Dallas employees to Little Rock if he could not find a sufficient number of qualified employees in Little Rock. Bernay told him he could not do so, and Papazian then affirmed he would live up to the commitment he had with Bernay. Papazian testified that Bernay told him Smith was planning on taking the Dallas employees to Little Rock, at which point he put Smith on the phone and had Bernay explain to him that Time Life could not do that. Papazian further testified that there was no threat to pull the crew over this issue.

Following these conversations, Smith contacted Pope and Bradford and told them that because of

<sup>1</sup> The start cards and the deal memos stated the employee's name, the position for which he was hired, the starting date, and his rate of pay. The start cards were agreements between the individual employees and F.P.S. on behalf of Time Life. The deal memos were memoranda between F.P.S. and Time Life.

pressure from Los Angeles he would not be able to take the Dallas employees to Little Rock. It is undisputed that on June 10, Bradford notified Pope that if the Dallas employees were not allowed to go to Little Rock, Local 127 would picket the set in Dallas at noon, June 12. Pope notified Smith of this threat, and later told Papazian that there was a real possibility of a strike. The next day F.P.S. filed the charges in this proceeding. On June 12, Pope went to the set to attempt to avert the strike, but it was not until the Dallas employees were notified by the Board that a notice of hearing would be issued that they agreed to continue working. On June 13, Time Life completed the Dallas phase of production. On June 15, it began production in Little Rock, replacing the Dallas employees primarily with Little Rock employees, but also utilizing Los Angeles employees in certain classifications.

### *B. The Work in Dispute*

The work in dispute involves film production work for the movie "Crisis" performed by employees of Time Life at Little Rock, Arkansas, which was performed by employees represented by IATSE and was claimed by employees represented by Local 127.

### *C. Contentions of the Parties*

IATSE contends that the dispute is not properly before the Board and that the notice of hearing should be quashed. It contends that there is no reasonable cause to believe that it has violated Section 8(b)(4)(D), arguing that it never threatened to strike or picket Time Life in support of its claim to the disputed work. It further contends that an agreed-upon method for the voluntary adjustment of the dispute exists to which the parties are bound. In this regard, it argues that Time Life, not F.P.S., is the employer of the Dallas employees, that Time Life agreed in a telegram to IATSE on June 17, 1980, to be bound by the results of the internal dispute resolution procedure of IATSE, which is also binding on Local 127 and IATSE, and therefore that all the parties in a position to make an effective assignment of the work in dispute have agreed to be bound by the results of the IATSE internal procedure. In the event the Board should find the dispute is properly before it, IATSE contends that the disputed work should be assigned to employees represented by it based on its collective-bargaining agreement with Time Life, industry practice, and economy and efficiency of operations.

F.P.S. and Local 127 contend that the dispute is properly before the Board. They contend that there is reasonable cause to believe that Section

8(b)(4)(D) has been violated, arguing that IATSE threatened to pull the Los Angeles employees back to Los Angeles if the Dallas employees went to Little Rock and that Local 127 threatened to picket the set in Dallas if the Dallas employees were not allowed to go to Little Rock. They further contend that no agreed-upon method for the voluntary adjustment of the dispute exists to which the parties are bound. In this regard, they argue that F.P.S. is the employer of the Dallas employees represented by Local 127 and that F.P.S. has not agreed in its collective-bargaining agreements with Local 127 and IATSE, or otherwise, to be bound by the internal dispute resolution procedure of IATSE. They further contend that the Board should award the work in dispute to the Dallas employees represented by Local 127 based on F.P.S.'s collective-bargaining agreements with IATSE and Local 127, relative skills, economy and efficiency of operations, area and past practices, job impact, and F.P.S.'s preference.

At the hearing, Time Life took no position as to whether the dispute is properly before the Board, as to whether it or F.P.S. was the employer of the Dallas employees, or as to which employees the disputed work should be assigned. However, in a telegram to IATSE on June 17, Time Life stated it did not desire to assign the work to employees represented by Local 127, but that it would respect any decision by IATSE assigning the work to either group of employees.<sup>2</sup>

### *D. Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

As noted above, it is undisputed that on June 10, 1980, Local 127, through Business Agent Bradford, notified Pope that it would picket the set in Dallas if the Dallas employees were not taken to Little Rock. Pope relayed this threat to Smith at Time Life, and subsequently told Papazian that there was a real possibility of a strike. Local 127 did not agree to continue working until assured that the Board was issuing the notice of hearing in this pro-

<sup>2</sup> Pursuant to IATSE's internal dispute resolution procedure, a meeting to review and resolve the dispute was held on July 8, 1980. Although F.P.S. and Local 127 chose not to appear, representatives of Time Life, IATSE, and individual West Coast Studio locals did attend and participate. The next day the president of IATSE issued a ruling that Local 127 did not have jurisdiction over the work to be performed in Little Rock. The hearing in this proceeding began subsequent to the issuance of this ruling.

ceeding. In these circumstances, we find reasonable cause exists to believe that Section 8(b)(4)(D) has been violated by Local 127.<sup>3</sup>

With respect to whether there exists an agreed-upon method for the voluntary adjustment of the dispute to which all parties are bound, we note that IATSE and Local 127 are bound by IATSE's internal dispute resolution procedure, and Time Life in its June 17 telegram to IATSE agreed to be bound by its results. However, F.P.S. has not agreed in its collective-bargaining agreements with Local 127 and IATSE, or otherwise, to be so bound. As noted above, IATSE argues that Time Life, not F.P.S., is the employer of the Dallas employees and therefore that all parties in a position to make an effective assignment of the work in dispute have agreed to be bound by the results of the IATSE internal procedure. On the other hand, F.P.S. and Local 127 argue that F.P.S. is the employer of the Dallas employees represented by Local 127 and therefore that no agreed-upon method for the voluntary adjustment of the dispute exists to which all parties are bound. We find it unnecessary to resolve these conflicting contentions and to determine whether IATSE's internal dispute resolution procedure constitutes an agreed-upon method for the voluntary adjustment of the dispute to which all parties are bound, since we are quashing the notice of hearing for the reasons set forth below.

We conclude, based on the unusual circumstances involved, that the dispute is moot. As noted above, the work in dispute has been completed. The Board frequently has held that the completion of the work involved does not render a jurisdictional dispute moot, where there is evidence of similar disputes between the parties in the past and nothing to indicate that such disputes will not occur in the future.<sup>4</sup> However, in the present case there is no evidence of a similar dispute having occurred between the parties in the past, and we find that it is unlikely that such a dispute will arise in the future.

Thus, we note that there is no evidence that similar disputes have arisen previously between F.P.S.

or Local 127 and Los Angeles-based producers filming in Dallas and another location with a mixed crew of Los Angeles and local employees. Furthermore, prior to the production of "Crisis," Time Life had not filmed in Dallas, utilized the services of F.P.S., or employed employees represented by Local 127. Additionally, there is no evidence that Time Life has any plans to engage in these activities in the future. Rather, it is clear that Time Life contracted with F.P.S. for the provision of equipment and personnel for the production of "Crisis" only, and did not establish a continuing relationship with either F.P.S. or Local 127.

Furthermore, it is apparant that the instant dispute arose because of the failure of F.P.S. and Time Life to enter into a written agreement delineating precisely for which job classifications and filming locations F.P.S. would provide employees and for how long these employees would work. Thus, it is clear that Local 127's claim for work and its threat to picket was based on its belief that Time Life had agreed to use Dallas employees represented by Local 127 in Little Rock for the filming of "Crisis" when it contracted with F.P.S. for the provision of equipment and personnel. However, as noted above, the various individuals involved, including Time Life's own representatives, Papazian and Smith, had different understandings as to the locations for which the Dallas employees were to be hired. These differences could, and probably would, have been avoided had F.P.S. and Time Life specifically addressed the matter in their written agreement. There is no reason to believe that similar misunderstandings would occur in the event Time Life in the future should utilize the services of F.P.S. for a production in which it films in Dallas and another location with a mixed crew of Los Angeles and local employees. Finally, it is clear that Local 127 made no claim for, nor threats concerning, any future work on any Time Life production. Therefore, we find that it is unlikely that similar disputes between the parties will recur in the future.

Based on all the foregoing, and emphasizing the particular and unusual facts of this case, we conclude that the dispute herein is moot. Accordingly, we shall quash the notice of hearing in this proceeding.

#### ORDER

It is hereby ordered that the notice of hearing issued in this proceeding be, and it hereby is, quashed.

<sup>3</sup> It is not clear that Bernay's alleged June 5, 1980, threat to pull the Los Angeles crew was in reference to the problem regarding the grips, which was later settled, or the possibility that the Dallas employees might be taken to Little Rock. Since we find reasonable cause to believe that Local 127 violated Sec. 8(b)(4)(D), and in view of our quashing of the notice of hearing herein on other grounds, we find it unnecessary to reach the question of whether there is reasonable cause to believe that IATSE violated Sec. 8(b)(4)(D).

<sup>4</sup> See, e.g., *Sheet Metal Workers International Association (AFL-CIO), Local No. 541 (Kingery Construction Company)*, 172 NLRB 1046, 1049 (1968), and cases cited therein at fn. 9.